

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of

Amendment of Part 20
and 24 of the Commission's
Rules -- Broadband PCS
Competitive Bidding and the
Commercial Mobile Radio
Service Spectrum Cap.

WT Docket No. 96-59

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Amendment of the Commission's
Cellular PCS Cross-Ownership Rule

GN Docket No. 90-314

**Initial Comments
of
Vanguard Cellular Systems, Inc.**

Vanguard Cellular Systems, Inc. ("Vanguard"), acting through counsel and in accordance with the Commission's Notice of Proposed Rule Making, FCC 96-119, released March 20, 1996 ("NPRM"), hereby files its Initial Comments in the captioned dockets.

I. INTRODUCTION

1. From its inception as a start-up small business in 1984, Vanguard and its subsidiaries now operate 26 non-wireline cellular telephone systems in the eastern half of the United States. Vanguard also has interests in 900 MHz specialized mobile radio providers and initially qualified to bid in the Block "A" and "B" Personal Communications Services ("PCS") auction. See FCC

Public Notice, Mimeo 50628, released November 10, 1994. Vanguard is a potential bidder in the upcoming Block "D", "E" and "F" PCS auctions. Therefore, Vanguard has a clear interest in the outcome of this proceeding and offers the following comments on the NPRM.

II. MEETING THE ADARAND STANDARD

2. Vanguard agrees with the Commission's own conclusion that the current administrative record does not measure up to the strict scrutiny standard set forth in Adarand. That is not to say that the standard could not be met through the gathering of substantial further evidence, which the Commission apparently plans to start.¹

3. But the Commission should not delay the "D", "E" and "F" Block auctions in order to collect such potential supporting data. The competitive wireless marketplace is at a critical formative stage, with the advent of Block "A" and "B" services and the anticipated completion of the Block "C" auction. The delay necessary to do a thorough job gathering the Adarand data could devalue the Block "D", "E" and "F" licenses and, more importantly, put their eventual licensees at a severe competitive disadvantage.

III. CONTROL GROUP EQUITY STRUCTURES AND AFFILIATION RULES

4. The Commission should follow the action it took with respect to the "C" Block auctions and allow all "F" Block applicants to employ the 50:149:9 percent equity structure. As the Commission notes, this approach already has been blessed by the United States Court of Appeals for the District of Columbia Circuit. Adopting this rule change would avoid a potential

¹ The Commission should proceed with the generic Notice of Inquiry that it announces in the NPRM.

additional cause for delay in the "F" Block auction. For the same reasons, the Commission also should make its proposed adjustments concerning the affiliation rules for the "F" Block, to extend them to all small businesses, as it did for the "C" Block.

IV. INSTALLMENT BIDDING

5. Vanguard supports the installment bidding options currently available to Block "F" auction winners. However, it opposes the extension of those options to small businesses that participate in the "D" and "E" Blocks.

6. The Commission set aside the "C" and "F" Blocks -- one third of the PCS spectrum authorized -- for entrepreneurs and small businesses. So far, modestly-sized companies like Vanguard, that are able to provide their own financing, have been kept out of those auctions. Small businesses have not been kept out of the Block "A" and "B" auctions; nor should they be kept out of the "D" and "E" Blocks.

7. But they should not be given special payment advantages in those auctions by the extension of installment payments to them alone. This would disadvantage other bidders and discriminate solely in favor of small business bidders. The Commission has limited these payment advantages to the two entrepreneur blocks. It should not now mix apples and oranges by extending them elsewhere, unless they are extended on a totally non-discriminatory basis (i.e., all bidders should benefit).

V. SMALL BUSINESS DEFINITION

8. The Commission's current definition of "small business" for Blocks "C" and "F" fails to reflect the unique circumstances of the wireless telecommunications marketplace. The concept of a small business, even as expanded by the Commission for these auctions, is not consistent with the capital-intensive reality of building a substantial telecommunications business.

9. The fact is that Vanguard, one of only a handful of remaining independent cellular companies, is dwarfed in size by its cellular competitors and other telecommunications giants. In terms of revenues and assets Vanguard is a relatively small company, compared to competitors and other communications companies with as much as 50 times Vanguard's assets.

10. Without some "room" in the definition of "small business" for companies the size of Vanguard, PCS licenses will largely wind up, directly or indirectly, being the assets of the much larger telecommunications companies. Many of these have financed the Block "C" applicants. Moreover, the source of that financing is not limited to large U.S. telecommunications companies.²

11. Vanguard proposes that the Commission lift the "small business" standard to \$350 million in average revenues and \$700 million in total assets. At the same time the Commission can preserve the existing "control group" equity structures which have helped propel the Block "C" auctions. This change will have the effect of permitting smaller telecommunications companies like Vanguard, which have their own financing, to participate in the "F" Block

² Washington Post, April 4, 1996, p. D9, "South Korean Money Pumps Up Auctions For Wireless Licenses."

auctions at the same time as the types of start-up enterprises that have taken advantage of the Block "C" financing structures.

12. Moreover, opportunities for companies like Vanguard to participate in the "F" Block auction will help promote a diversification of PCS license owners. The reasonable diversification of ownership of the means of common carrier communications is a sound national policy because it (a) creates competitive forces within the industry, (b) stimulates product and service innovation characteristic of a competitive marketplace and (c) helps guard against the accumulation of excessive market concentration that can lead to anticompetitive activities.

13. Currently, the results of the PCS auctions are likely to leave the bulk of the licenses in the hands of large telecommunications conglomerates/carriers or entities financed by companies of similar size. The Commission should be concerned about such a concentration resulting from a program that was designed to produce a decidedly different result. Therefore, the Commission should relax the "small business" standard as Vanguard proposes.

VI. CELLULAR/PCS CROSS OWNERSHIP

14. Vanguard supports an elimination of the PCS/cellular cross-ownership restriction in Section 24.204(a) of the Commission's Rules. The broader 45 MHz cap on CMRS uses is more than sufficient to serve the concern that originally justified Section 24.204(a). Moreover, the evolving competitive wireless marketplace, with any number of PCS, ESMR and other competitive services, makes it increasingly unlikely that cellular providers could successfully engage in anticompetitive practices or exert undue market power. The debut of PCS in the Washington-Baltimore MTA, where some 60,000 PCS subscribers have signed up within the

first few months for what is at this point essentially a stand-alone system. is proof that this is the case.

VII. CELLULAR ATTRIBUTION

14. Vanguard does not favor relaxation of the 20 percent attribution standard in Section 24.204(d)(2)(ii). The Commission elsewhere employs attribution standards of lower levels. See Review of the Commission's Regulations Governing Attribution of Broadcast Interests (Notice of Proposed Rulemaking), 10 FCC Rcd 3606 (1995) (increase broadcast attribution to 10%/20%). Moreover, most of the principal cellular companies are now publicly-traded and, therefore, a 20% interest held by a single shareholder clearly would create the possibility of at least de facto control. The 20% attribution standard should not be relaxed.

VIII. OWNERSHIP DISCLOSURE/AUDITED FINANCIALS

15. Vanguard supports the proposal to amend Section 24.813 of the Commission's Rules to limit the requirements to disclose data on ownership interests in other businesses. The Commission authorized such limitations in connection with the "A", "B" and "C" Block auctions. The policy and rationale underlying those waivers is equally applicable to support the rule change proposed here. However, Vanguard does not believe it need be limited to disclosures by only "attributable stockholders." Rather, the same, more limited, disclosure requirements should apply to others required to make outside business disclosures by Section 24.813(a) (i.e., officers, directors or key management personnel). The logic underlying the limitation is the same.

16. Vanguard also supports the flexibility to use other than audited financial statements. Particularly with respect to newly-formed applicant entities the audited financial statement requirement is an unnecessary burden.

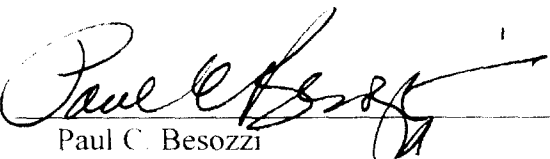
IX. SIMULTANEOUS AUCTION

17. The Commission should conduct the "D", "E" and "F" Block auctions concurrently. Simultaneous access to these licenses makes sense from a business and market planning perspective. Delay of the auction of one or more of the Blocks would only hinder bringing service to the public and generate additional expense. Therefore, the Commission should proceed with its plan to conduct the "D", "E" and "F" Block auctions simultaneously.

Dated: April 15, 1996

Respectfully submitted,

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